IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 61 OF 2004

Dinanath Narasayya Tambakhu ...Petitioner

Versus

State of Maharashtra & Ors. ...Respondents

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Mr. R.V. Pai i/b A.A. Kocharekar, counsel for Petitioner

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CORAM: B. H. MARLAPALLE, J.

DATED: 15TH APRIL, 2005

P. C.:-

1. Second Appeal No. 517 of 1986 came to be dismissed by order dated 10.3.1998 thereby confirming the decree in Special Civil Suit No.1101 of 1974. The contempt petition No. 50 of 2002 was also disposed by this Court on 2.7.2002 by directing the petitioner to make requisite application to the respondents State authorities claiming the benefits as stated in para 1 therein and including other permissible dues and consequently the respondents were directed to consider the application and dispose of the same on merits and according to law within eight weeks from the date of receipt of such application.

2. In this contempt petition it has been alleged that the respondents have wilfully disobeyed the order passed by this Court on 2.7.2002 and also earlier order dated 10.3.1998 dismissing the second appeal.

3. The respondent No.4 has filed affidavit in reply and submitted that the petitioner was reinstated on 4.10.1971 on the post of Assistant Registrar and his services came to an end on 4.8.1994 on reaching the age of superannuation. The benefits of annual increments due on 1.4.1971, 1,4,1972, 1.4.1973 and 1.4.1974 have been sanctioned to him. Similarly difference of pay of allowances for the period from 1.4.1971 to 1.4.1974 which comes to Rs.29,529/- has also been paid to the petitioner by Demand Draft on 13.2.2002. The petitioner’s pension has been revised by the Accountant General, Maharashtra-I as per the letter dated 22.1.2002. So far as the promotion is concerned, the D.P.C. in its meeting held in December, 2002 reviewed the service record of the petitioner and after due verification it came to the conclusion that the petitioner was not fit for promotion. It has been further stated that the application submitted by the petitioner pursuant to the order dated 2.7.2002 has been considered on merits and all his financial dues have been released except the promotion. The affidavit does not mention

about releasing the efficiency bar.

4. The petitioner may have an independent remedy against the decision of D.P.C. which has been accepted by the State Government and also the crossing of efficiency bar. He may also be entitled for consequential benefits thereupon. As these are the issues which will have to be agitated in an appropriate proceedings and in the contempt petition such relief cannot be considered even if it is accepted that the decree passed by the trial court received its finality when the Second Appeal was dismissed by this Court.

5. There is no case made out for wilful disobedience of the order passed by this Court on 2.7.2002 and as far as the decree is concerned, the petitioner will have to take out execution proceedings. Hence, there is no case made out to take cognizance for contempt of Court within the meaning of Section 2(b) of the Contempt of Courts Act, 1971. The contempt petition is therefore, rejected summarily.

6. However, it is clarified that this order would not come in the way of the petitioner to take out appropriate proceeding regarding his grievance of promotion, efficiency bar and consequential financial benefits.

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